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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

P-MUR 515

DATE SUBMITTED: February 9, 2011

DATE ACTIVATED: February 28, 2011

EXPIRATION OF SOL: Earliest 1/31/13  
Latest 1/31/16

**SOURCE:**

**RESPONDENTS:**

National Structured Settlements Trade  
Association  
National Structured Settlements Trade  
Association Political Action Committee  
and Eric Vaughn, in his official capacity  
as treasurer

**RELEVANT STATUTES:**

2 U.S.C. § 432(h)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441b(a)  
11 C.F.R. § 103.3(a)  
11 C.F.R. § 104.14(d)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The National Structured Settlements Trade Association Political Action Committee and Eric Vaughn, in his official capacity as treasurer, ("NSSTA PAC") has filed a submission ("Submission") with the Federal Election Commission (the "Commission") on behalf of itself and National Structured Settlements Trade Association ("NSSTA") (together "Respondents"), disclosing violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). NSSTA PAC, the separate segregated fund of NSSTA, a California non-

1 profit corporation, acknowledges that it incorrectly deposited PAC funds into the NSSTA  
2 general treasury bank account and NSSTA general treasury funds into the PAC's bank account,  
3 which resulted in (1) the late deposit of certain PAC contributions, and (2) the PAC's receipt of  
4 corporate funds belonging to NSSTA. Further, NSSTA PAC did not report the mis-deposits or  
5 subsequent corrective transfers in its FEC disclosure reports. In addition to the deposit errors,  
6 the submission identifies two corporate contributions that the PAC received and refunded, but  
7 did not report, and certain other reporting omissions on FEC disclosure reports dating back to  
8 2007. The PAC's reporting omissions resulted in an incorrect cash-on-hand amount reported on  
9 each of NSSTA PAC's disclosure reports beginning with its 2007 Year-End Report and  
10 continuing through 2010.

11 Based on the information provided in the Submission and in subsequent communications  
12 with counsel, this Office recommends that the Commission find reason to believe that:  
13 (1) NSSTA PAC failed to timely deposit contributions into the PAC's account within ten days of  
14 receipt, in violation of 2 U.S.C. § 432(h) and 11 C.F.R. § 103.3(a); (2) NSSTA and NSSTA PAC  
15 violated 2 U.S.C. § 441b(a) in connection with the mis-deposit of NSSTA corporate funds into  
16 the PAC's bank account, and the PAC's receipt of two corporate contributions; and (3) NSSTA  
17 PAC violated 2 U.S.C. § 434(b)(1), (2) and (4) and 11 C.F.R. § 104.14(d) by failing to report  
18 numerous transactions over multiple reporting periods and by incorrectly reporting its cash-on-  
19 hand.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 In 2007, NSSTA hired an association management company, Smith Bucklin, to manage  
4 NSSTA PAC and to manage certain functions for NSSTA. Smith Bucklin processed dues and  
5 other payments made to NSSTA by trade association member companies, and federal political  
6 contributions made to NSSTA PAC by employees of the member companies. The Submission  
7 states that in 2010, NSSTA PAC's staff discovered inaccuracies in its 2009 disclosure reports  
8 and as a result, conducted an examination of the PAC's financial records. This examination  
9 revealed that they could not reconcile the PAC's bank records with the cash-on-hand as disclosed  
10 to the Commission, and that certain contributions and expenditures had not been reported to the  
11 Commission. See Submission at 1. After this discovery, "NSSTA terminated its relationship  
12 with Smith Bucklin in May 2010" and later appointed a new PAC treasurer. See Submission  
13 at 2. Counsel has indicated that Smith Bucklin did not cooperate with Respondents in  
14 determining how the errors had occurred, and instead, NSSTA and NSSTA PAC hired counsel to  
15 undertake an examination of the relevant financial records. This examination revealed that  
16 Smith Bucklin, on behalf of the PAC, had deposited funds intended for NSSTA's bank account  
17 into the PAC's bank account on multiple occasions. Further, on two occasions it deposited  
18 contributions intended for the PAC's bank account into NSSTA's bank account.<sup>1</sup>

<sup>1</sup> According to counsel, the PAC employees do not know how the management company accidentally deposited the funds into the wrong bank accounts, because "[c]ontributions to the PAC and [funds for] NSSTA's various corporate accounts arrive separately." See Supplement dated March 23, 2011, at 1 ("Supplement"), including as attachments Reconciliation Notes and Bank Records. NSSTA PAC states "[w]e have not identified a circumstance since the new Executive Director took over processing contributions and bookkeeping wherein a PAC contribution arrived in the same envelope as a contribution to NSSTA." *Id.* The PAC changed bank accounts from a Chevy Chase Bank account to a SunTrust Bank account between January and February, 2008, around the time that the initial deposit errors occurred, but the Submission does not indicate that this change was in any way related to the deposit problems. The bank records show that at all times the PAC's account maintained sufficient funds, exclusive of the mis-deposited NSSTA funds, to pay all of its obligations. See Bank Records, attached to Supplement.

Prior to the PAC's discovery of the discrepancies in its disclosure reports, Smith Bucklin had apparently identified some of its own mistaken deposits, because the bank records reflect that it corrected some, but not all, of the switched deposits by making subsequent corresponding transfers between the NSSTA general bank account and the NSSTA PAC bank account within periods ranging from a few days to a few months. See Submission at 2. In addition, the PAC accepted two impermissible corporate contributions and later refunded those contributions without reporting either the receipt or refund to the Commission. The chart below lists each of the transactions at issue:

**PAC CONTRIBUTIONS INTO NSSTA ACCOUNT**

<u>Date</u>	<u>Contributor</u>	<u>Related Corrective Transfer</u>	<u>Amount</u>
12/11/07	JoAnn Ebaon	1/25/08	\$500
12/14/07	Sean Coleman	1/25/08	\$1000
		<b>TOTAL</b>	<b>\$1,500</b>

**NSSTA FUNDS INTO PAC ACCOUNT**

<u>Date</u>	<u>Contributor</u>	<u>Related Corrective Transfer</u>	<u>Amount</u>
2/5/08	NA	2/20/08	\$50
3/20/08	NA	6/17/08	\$1,150
3/24/08	NA	6/17/08	\$1,150
3/28/08	NA	3/14/11	\$5,100
3/31/08	NA	6/17/08	\$1,800
4/4/08	NA	6/17/08	\$690
4/7/08	NA	6/17/08	\$690
5/14/08	NA	6/17/08	\$371
8/18/08	NA	4/9/09	\$227
12/10/08	NA	4/9/09	\$500
		<b>TOTAL</b>	<b>\$11,728</b>

**1 CORPORATE CONTRIBUTIONS**

<b>Date</b>	<b>Contributor</b>	<b>Related Corrective Transfer</b>	<b>Amount</b>
5/19/09	Millenium Settlements	5/28/09 (refund to contributor)	\$500
12/13/10	Richmond Settlements	3/14/11 (refund to contributor)	\$250
		<b>TOTAL</b>	<b>\$750</b>

2  
3 NSSTA PAC did not timely report to the Commission the mistaken deposits into the  
4 PAC's bank account and PAC funds into the NSSTA bank account, the corrective transfers, or  
5 its receipt and later refunds of corporate contributions. *See* Submission at 2, Reconciliation  
6 Notes attached to Bank Records, and Letter from Counsel, May 27, 2011. Rather, NSSTA PAC  
7 first reported these transactions to the Commission in amended reports filed on February 8, 2011.

8 In addition to the reporting issues discussed above, the Submission and follow-up  
9 communications from counsel identified several other types or categories of reporting  
10 discrepancies that were not quantified, including failure to report interest earned, contributions  
11 received, refunds, offsets to operating expenditures, and taxes paid.<sup>2</sup> *See* Submission at 1; *see*  
12 *also* Reconciliation Notes attached to Bank Records and Letter from Counsel, May 10, 2011.  
13 The ongoing failures to report all transactions also resulted in incorrectly reported cash-on-hand  
14 for the PAC from the 2007 Year-End Report through the PAC's 2010 reporting. The total  
15 discrepancies between the PAC's original disclosure reporting and its amended reporting,  
16 including the mis-deposits listed above, are as follows:

<sup>2</sup> The Submission failed to identify specific dollar figures for the reporting errors made, and follow-up communications with counsel confirmed that Respondents had not determined specific amounts that correlated to the categories of errors revealed in the Submission. To determine an amount in violation, OGC compared NSSTA PAC's original disclosure reports with its amended reports to determine total annual receipt discrepancies and total annual disbursement discrepancies for each year.

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<b>Year</b>	<b>Receipts</b>	<b>Disbursements</b>	<b>Total</b>
<b>2007</b>	<b>33.46<sup>3</sup></b>	<b>0.00</b>	<b>33.46</b>
<b>2008</b>	<b>12,741.75</b>	<b>5,914.75</b>	<b>18,656.50</b>
<b>2009</b>	<b>6,373.09</b>	<b>7,100.00</b>	<b>13,473.09</b>
<b>2010</b>	<b>1,901.17</b>	<b>8,310.46</b>	<b>10,211.63</b>
			<b>\$42,374.68</b>

In response to the discovery of the deposit and reporting errors, NSSTA PAC severed ties with vendor Smith Bucklin and has hired a different consulting company to manage its accounts and its disclosure reports. NSSTA and NSSTA PAC also made additional corrective transfers and refunds as necessary. NSSTA PAC has filed numerous amended reports with the Commission reflecting the correct information about the original transactions and reporting any corrective transfers and refunds. \$6,850 in outstanding disbursements related to the Submission were resolved during the first half of 2011 and will be reported on the PAC's 2011 semi-annual Form 3X disclosure report, due July 31, 2011. See May 10, 2011 and May 27, 2011 Letters from Counsel. These transactions include the transfer of \$5,100 in mis-deposited funds to the NSSTA Operating Account, a refund of a \$250 corporate contribution to Richmond Settlements, and the disgorgement of the funds noted in fn. 3, *supra*. NSSTA PAC also indicates that it has instituted better internal controls, including "regular reconciliation of bank statements with its disclosure reports, and more direct personal involvement – including review of bank statements – by the Committee's new Treasurer and NSSTA consultants." See Submission at 2.

<sup>3</sup> This figure does not include the 12/11/07 and 12/14/07 PAC contributions that were mis-deposited into the NSSTA general treasury account. The PAC had originally reported those contributions as received on 1/25/2008, the date on which it transferred the contributions from the NSSTA account to the PAC's account. Rather than amending its 2007 Year-End Report to account for those contributions when they were originally received, the PAC amended its January 2008 disclosure report to indicate that it would voluntarily disgorge the contributions because it had commingled those funds with NSSTA's general treasury funds.

**B. Legal Analysis**

**1. Untimely Deposits**

Political committees must establish a committee depository account and must deposit all receipts into the designated account. *See* 2 U.S.C. § 432(h). Further, all receipts by a political committee shall either be deposited in the committee's accounts or returned to the contributor without being deposited within 10 days of the treasurer's receipt. *See* 11 C.F.R. § 103.3(a). The available information indicates that NSSTA PAC violated 2 U.S.C. § 432(h) and 11 C.F.R. § 103.3(a), by failing to deposit \$1,500 of NSSTA PAC contributions in its account within 10 days because these funds were instead incorrectly deposited into the NSSTA general account. Specifically, NSSTA PAC deposited a \$500 contribution from JoAnn Ebdono made on December 11, 2007, and a \$1,000 contribution from Sean Coleman made on December 14, 2007, into the NSSTA general account. The PAC's vendor transferred these funds from the NSSTA account to the PAC account on January 25, 2008, more than 10 days after receipt. Accordingly, we recommend that the Commission find that there is reason to believe that NSSTA PAC violated 2 U.S.C. § 432(h) and 11 C.F.R. § 103.3(a).

**2. Corporate Contributions**

The Act prohibits corporations from making any contribution in connection with a Federal election, and prohibits political committees from knowingly accepting or receiving such contributions. 2 U.S.C. § 441b(a). This prohibition extends to corporations using general treasury funds to make contributions to their SSFs. *See* 11 C.F.R. § 114.5; *see also Campaign Guide for Corporations and Labor Organizations* (2007), p. 15. Available information indicates that \$11,728 in NSSTA funds were deposited into NSSTA PAC's bank account between February 5, 2008, and December 10, 2008. Of that amount, \$5,100 of the corporate funds remained in the PAC's bank account for almost three years until March 14, 2011. *See* chart on p.

1 4, *supra*. Respondents also indicate that on December 13, 2010, the PAC accepted a \$250  
2 prohibited corporate contribution from Richmond Settlements, which was not refunded until  
3 March 14, 2011, beyond the 30-day permitted refund period for prohibited corporate  
4 contributions. *See* 11 C.F.R. § 103.3(b)(1).<sup>4</sup> We therefore recommend that the Commission find  
5 reason to believe that NSSTA violated 2 U.S.C. § 441b(a) by making prohibited corporate  
6 contributions, and NSSTA PAC violated 2 U.S.C. § 441b(a) by accepting prohibited corporate  
7 contributions. *See* MUR 6326 (American Association of Physician Specialists) (Commission  
8 found RTB for a violation of 2 U.S.C. § 441b(a) where a trade association deposited Association  
9 corporate funds into its SSF's account).

### 10 **3. Reporting**

11 A political committee's disclosure reports must disclose the amount of cash on hand at  
12 the beginning of each reporting period. *See* 2 U.S.C. § 434(b)(1). A political committee's  
13 disclosure reports must also disclose all receipts and disbursements. *See* 2 U.S.C. § 434(b)(2)  
14 and (4). Committee treasurers are responsible for the timely and complete filing of disclosure  
15 reports and for the accuracy of the information contained therein. *See* 11 C.F.R. § 104.14(d).  
16 The available information indicates that NSSTA PAC violated 2 U.S.C. § 434(b)(1), (2) and (4)  
17 and 11 C.F.R. § 104.14(d) throughout the 2007-2010 period by failing to accurately report its  
18 cash on hand for each reporting period, and by failing to disclose all receipts and disbursements  
19 in its ongoing disclosure reporting. NSSTA PAC admits that its disclosure reports from the  
20 Year-End 2007 Report through the 2010 Reports did not disclose numerous receipts and  
21 disbursements, including: (1) the deposit of NSSTA funds into the PAC's account; (2) the  
22 transfers of NSSTA funds out of the PAC's account; (3) the subsequent transfers into the PAC's

<sup>4</sup> The PAC accepted another \$500 corporate contribution from Millenium Settlements on May 19, 2009, but it properly refunded this contribution on May 28, 2009, within the 30-day period for timely return of a prohibited corporate contribution. *See* 11 C.F.R. § 103.3(b)(1).



1 account of funds originally mistakenly placed in the NSSTA general account; (4) certain  
2 permissible contributions received; (5) receipt of prohibited corporate contributions; and  
3 (6) other items that were not quantified, including receipts of interest earned, disbursements for  
4 tax payments, and certain refunds of operating expenses. *Supra* at 4-5. These errors also  
5 resulted in ongoing misreporting of the PAC's cash-on-hand from 2007 through 2010.

6 Therefore, we recommend that the Commission find reason to believe that the National  
7 Structured Settlements Trade Association PAC and Eric Vaughn, in his official capacity as  
8 treasurer, violated 2 U.S.C. § 434(b)(1), (2), and (4) and 11 C.F.R. § 104.14(d).

9 **III. CONCILIATION**

**P-MUR 515 (National Structured Settlements Trade Association PAC)  
First General Counsel's Report**

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**IV. RECOMMENDATIONS**

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1. Open a MUR.

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2. Find reason to believe that National Structured Settlements Trade Association Political Action Committee and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C. § 432(h) and 11 U.S.C. § 103.3(a).

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3. Find reason to believe that National Structured Settlements Trade Association and National Structured Settlements Trade Association Political Action Committee and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a).

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4. Find reason to believe that National Structured Settlements Trade Association Political Action Committee and Eric Vaughn, in his official capacity as treasurer, violated 2 U.S.C. § 434(b)(1), (2), and (4) and 11 C.F.R. § 104.14(d).

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5. Approve the attached Factual and Legal Analysis.

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8. Approve the appropriate letter.

Christopher Hughey  
Acting General Counsel

7-1-11

Date

BY: Kathleen Guith  
Acting Associate General Counsel for  
Enforcement

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